

Sec. 30-10.4. - Nonconforming uses.

- (a) *Continuance of nonconforming uses.* Nothing contained in this Land Development Code shall be construed to prohibit a continuation of the particular lawful use or uses of any land, building, structure, improvement, or premises legally existing in the respective districts as of the adoption of this Code. Any modification of an existing lawful use shall conform to the regulations this Code.
- (b) *Change in location of nonconforming building or structure.* Should any nonconforming building or structure be moved, it shall be required to conform to the existing regulations for the district.
- (c) *Rules for interpretation.* Nothing in this Land Development Code shall be interpreted as authorization for, or approval of, the continuation of any illegal or unauthorized nonconforming use of a building and/or structure. The casual, intermittent, temporary, or illegal use of land, building or structure shall not be sufficient to establish the existence of a nonconformity.
- (d) Expanding or extending permitted nonconformity is prohibited, except under the following circumstances:
 - (1) *Restoration.* Any nonconforming structure that has been damaged or made unsafe or unusable to an extent less than 50 percent of either the assessed value of the structure excluding the land recorded by the property appraiser's office, or the comparable property appraisal for the total market value of the structure, may be restored or reconstructed to its intended use, provided; however, the floor area of such use, building or structure shall not exceed the floor area requirements that currently exist under the Code. All repairs shall be substantially completed within one year of the sustained damages or such use shall not be restored. A nonconforming feature may not be increased or intensified. The one-year period may be extended by the building official, consistent with emergency repairs and extensions provided under the *Florida Building Code*.
 - (2) *Repairs.* Normal maintenance and repair and incidental alteration of a nonconforming structure or a nonconforming use is permitted, provided it does not extend the area or volume of space occupied by the nonconforming use. A building or other structure containing residential nonconforming uses may be altered to improve interior livability; provided, however, that no structural alterations are made that would increase the number of dwelling units or otherwise increase a nonconforming feature of the structure.
 - (3) *Site alterations.* Site alterations, including but not limited to the management of off-street parking or the enlargement of nonbuilding recreational facilities of a nonconforming use, are permitted provided that the proposed alterations do not increase the degree of nonconformity.
 - (4) *Single family dwellings.* Restoration, repairs, and site alterations can be made to existing single family dwellings in districts that allow such single family dwellings, provided that such restorations, repairs or site alterations do not increase the number of dwelling units, increase

density, increase the degree of the nonconformity, or result in a different type of nonconformity from that which is already considered to be grandfathered.

- (5) *Nonconforming density.* Existing residential dwellings that are nonconforming as to density shall not require a variance to permit the otherwise allowable addition or alteration to the building or site, provided that the density is not increased.
- (e) *Effect of actual construction and application for certificate of use or building permit.* To avoid undue hardship, nothing in this division shall be deemed to require a change in plans, construction or designated use of any building on which actual construction was lawfully begun prior to adoption of this Code and/or upon which actual building construction has commenced and continued in compliance with the building code and applicable provisions of this Land Development Code. "Actual construction" is defined to include the placing of materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be "actual construction," provided that all such acts have commenced and continued in compliance with the building code. In addition, nothing in this division shall be deemed to require a change in plans, construction, or designated use of any building on which a building permit or certificate of use and occupancy has been applied for prior to the date of the adoption of this Code. This division shall apply to any amendment to the Land Development Code in the same manner as the Code's original adoption. Where building permits or certificates of use and occupancy are sought in compliance with this division, the applicant shall have a period not to exceed six months after the effective date of these land development regulations, or applicable amendment thereto, within which to obtain a final building permit or certificate of use and occupancy.
- (f) *Change in nonconforming uses without structural alteration.* If no structural alterations are made, a nonconforming use of a building or structure may be changed to another nonconforming use of a similar or higher (more restrictive) classification under the following conditions:
 - (1) The change in use shall not intensify or enlarge the basic use of the building or premises by increasing the need for parking facilities; increasing vehicular or pedestrian traffic; allowing or increasing noise, vibration, fire hazard, smoke, dust or fumes; increasing hours of operation or number of employees; increasing ground coverage or adversely impacting drainage; otherwise resulting in a more intensive use of the building or premises; or changing the basic character of the building or premises unless such action would bring the use further into compliance with the current provisions of this Land Development Code.
 - (2) When a nonconforming use of all or any part of a building, structure, or premises has been changed to a conforming use, that portion of the nonconformity shall be abandoned.
 - (3)

Abandonment of nonconformity. If a nonconformity is removed, abandoned, or ceases (except when government action impedes access to the premises), then any and every future use of the structure or premises shall be in conformity with the use provisions of the Land Development Code. All material and equipment associated with the abandoned nonconformity shall be completely removed from the premises by its owner. Additional structures that do not conform to the requirements of this Land Development Code shall not be erected in connection with such nonconformity. A nonconforming use shall be considered abandoned or having ceased when the land use has been discontinued for a period of 12 months as indicated by one or more of the following:

- a. Allowing licenses or certificate of use to lapse;
- b. Removing meters;
- c. Not maintaining structure in a habitable condition;
- d. Not making unit available for occupation (i.e., advertising or marketing through a realtor or other agent);
- e. Failure to perform actions pursuant to the terms of an active building permit; or
- f. Failure to occupy the site.

(Ord. No. 09-18, § 1, 8-20-2009)